आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़

# IN THE INCOME TAX APPELLATE TRIBUNAL
# DIVISION BENCH, "A" CHANDIGARH

## BEFORE SHRI A.D.JAIN, VICE PRERSIDENT AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No 1305/CHD/2018
निर्धारण वर्ष / Assessment Year : 2009-10

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| M/s Gymkhana Club,<br>Sector 6,<br>Panchkula. | Vs | The ITO,<br>Ward-3,<br>Panchkula. |
| स्थायी लेखा सं./PAN NO: AAAAG0115B | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by: Shri S.K.Mukhi, Advocate
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr.DR

सुनवाई की तारीख/Date of Hearing : 07.10.2024
उदघोषणा की तारीख/Date of Pronouncement : 28/10/2024

**PHYSICAL HEARING**

## आदेश/Order

**PER VIKRAM SINGH YADAV,A.M.**

This is an appeal filed by the assessee against the order of ld. Commissioner of Income Tax (Appeals), Panchkula dated 16.02.2016 wherein the assessee has taken the following grounds of appeal :

*"1. That the impugned order of Commissioner of Income Tax (Appeals) is illegal, unjustified, erroneous, perverse and against the facts of the present case and judicial pronouncements.*

*2. That the impugned order of Commissioner of Income Tax (Appeals) is illegal, unjustified, erroneous, perverse and against the facts Of the present case and judicial pronouncements in confirming the impugned interest levied u/s 234B of the Income Tax Act, 1961.*

*3. That the impugned order of Commissioner of Income Tax (Appeals) is illegal, unjustified, erroneous, perverse and against the facts of the present case and judicial pronouncements as the appellant disputes the very levy of the interest u/s 234B of the Income Tax Act, 1961 as bad in law.*

*4. That the appellant craves leave to add, amend and delete any of the grounds of appeal on or before the disposal of the present appeal."*

2. At the outset, it is noted that the appeal of the assessee was dismissed by the Co-ordinate Bench vide its order dated 04.07.2022. Thereafter, the same was recalled on application filed by the assessee in M.A.No. 20/CHD/2022 vide order dated 06.10.2023. Hence, the present appeal has come up for adjudication before us.

2.1 It is further noted that there is a delay in filing the present appeal by 902 days as pointed out by the Registry.

2.2 In this regard the Ld. AR submitted that the appeal was decided by the Ld. CIT(A), Panchkula vide order dt. 16/02/2016, which was received by the assessee on 26/02/2016. It was submitted that the order so received remained in the office of the Counsel for the assessee and since various other appeals were pending and were in the process of being heard before the Ld. CIT(A) and ITAT, the present appeal could not be filed in time. In this regard, it was submitted that the Hon'ble Punjab & Haryana High Court decided the appeal of the assessee Club vide common order dt. 30/11/2015 which was received on 29/01/2016

setting aside all the appeals before the Tribunal on the issue of charging of interest on FDRs which was then taken up by the Tribunal and disposed of vide common order dt. 26/09/2017 after number of hearing spanning from 30/11/2015 to 26/09/2017 and since the impugned order of the Ld. CIT(A) dt. 16/02/2016 having been received during the last week of February and as a result, the Counsel for the assessee could not file the appeal against the said order before the Tribunal and the delay was inadvertent and unintentional without any undue benefit to the assessee. It was submitted that on 05/09/2018 when the notice of recovery was received that the assessee came to know that the appeal is not filed against the impugned order though for other years various appeals were filed before the ITAT and before the Hon'ble High Court and on such realization, the present appeal was filed on 15/10/2018. It was accordingly submitted that it is only due to oversight by the Counsel that the appeal could not be filed and for such act of the Counsel, the assessee should not be penalized. It was accordingly submitted that the delay in filing the present appeal be condoned and appeal filed by the assessee be admitted for adjudication on merits.

2.3 The Ld. DR is heard who has submitted that there is a substantial delay in filing the preset appeal and the assessee

has not submitted reasonable cause explaining the delay.

2.4 After hearing both the parties and considering the material available on the record including the Affidavit of the Counsel of the assessee which has been placed on record, we find that the assessee had reasonable cause for the delay in filing the present appeal due to oversight at the end of the Counsel who was handling multiple appeals and appearance before the Hon'ble High Court as well as the Coordinate Bench during the said period which has resulted in delay in filing the present appeal. Hence the delay is herby condoned and the appeal of the assessee is admitted for adjudication.

3. Briefly the facts of the case are that the assessee club had declared 'Nil' income in its return of income claiming the whole of its receipts as exempt under the principle of mutuality. As per the return of income filed for the year under consideration, the excess of receipt over expenditure works out to Rs.47,00,693/- which included interest income of Rs.34,78,851/- on fixed deposit receipts placed with the banks and interest on Saving Account amounting to Rs.35,140/-. As against the claim of the assessee that the whole of its income is exempt following the principle of mutuality, the AO held that the nature of its management and involvement of HUDA in the affairs of the assessee club

infers that the doctrine of mutuality was missing and the income of the assessee was held taxable. Regarding interest from banks, the AO observed that 'the profit made on account of interest from banks went to increase the funds of the assessee and benefit out of the same came to Members qua Members but not to qua contributors i.e., banking agency'. Thus, there was absence of mutuality and this made the profit income of the assessee as taxable as such. The AO, thus, treated the surplus income of Rs.47,00,693/- shown by the assessee as taxable in its hands. The ld. CIT(A) observed that the case of the assessee was covered by the assessee's own case by the earlier orders of the ld. CIT(A) who has in turn followed the order of the Tribunal in the case of the assessee for earlier years. Consequently, the income of the assessee was held to be exempt from tax.

4. Against the said order, the Revenue came in appeal before the Tribunal. The Tribunal vide its order dated 15.03.2013 in ITA No.1312/CHD/2012 following the orders of the Tribunal in earlier years, upheld the order of the ld. CIT(A) in applying the principle of mutuality to the receipts received by the assessee from its members. However, in view of the decision of the Hon'ble Supreme Court in 'Bangalore Club Vs CIT & others' dated 14.01.2013, the interest income earned by the assessee on FDRs and on Saving Account was

held to be falling outside the principle of mutuality and the same was held exigible to income tax in the hands of the assessee and the AO was directed to compute the total income in the hands of the assessee accordingly and the relevant findings of the Co-ordinate Bench are contained in para 14-15 of its order which reads as under :

> "We have heard the rival contentions and perused the record. The issue arising in the present appeal is with regard to the applicability of principles of mutuality. The assesses club had shown is receipt from its members as not taxable in its hands. Further, the assessee during the year under consideration had received interest on FDRs and also interest on saving account which was also claimed as exempt from tax following the principles of mutuality. We find that similar issue arose in assessee's own case in ITA No.777/Chd/2007 relating to assessment year 2004-05 - order dated 29.1.2008, winch was followed by the Tribunal in ITA No. 152/Chd/2012 relating to assessment year 2008-09 in assessee's own case - order dated 21.6.2012. In view of ratio laid down by the Tribunal in assessee's own case we uphold the order of the CIT (Appeals) in applying the principles of mutuality to the receipts received by the assessee from its members. However, in view of ratio laid down by the Hon'ble Apex Court in Bangalore Club Vs. CIT & Others (supra) vide judgment dated 14.1.2013, the interest income earned by the assesses on FDRS and also saving account does not fell within the principles of mutuality and is thus exigible to income tax in the hands of the assessee. In ITA No. 1311/Chd/l2 the total interest income on FDRs received by the assessee was Rs. 12,99,490/- and interest on saving account was Rs.23,510/-, which is taxable in the hands of the assessee in view of the ratio laid down by the Hon'ble Apex Court in Bangalore Club Vs. CIT & Others (supra). The total surplus after setting off of the expenditure in the hands of the assessee was Rs.29,42,476/- for the year under consideration and the balance after excluding the bank interest i.e interest on FDRs and saving account is not taxable in the hands of the assessee in view of the application of principles of mutuality. The total income assessed by the Assessing Officer in the hands of the assessee by denying the application of principles of mutuality was Rs.29,42,576/- and total interest income received by the assessee during the year under consideration was less than the said income assessed in the hands of the assessee and hence we find no merit in the plea of the learned A.R. for the assessee that by applying ratio laid down by

> the Hon'ble Apex Court in Bangalore Club Vs CIT & Others (supra), it would result in enhancement of income in the hands of the assessee. The Hon'ble Apex Court lays down the law of and as it existed and the same is to be applied and in any case by applying the said ratio and bringing the interest income earned by the assessee during the year to tax, does not result in any enhancement of income. Hence, the said plea of the learned A.R. for the assessee is rejected.
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> 15. Similarly, in ITA No. 1312/Chd/2012 the total surplus after expenditure worked out to Rs.47,00,693/-/which was taxed in the hands of the assessee by the Assessing Officer. The interest income on FDRs earned by the assessee was Rs.34,78,851/- and interest or saving account was Rs.35,140/-, which is to be taxed in the hands of the assessee in accordance therewith. The grounds of appeal raised by the Revenue are thus partly allowed."

5. The AO, thereafter, given effect to the order so passed by the Co-ordinate Bench wherein as against the original assessed income of Rs.47,00,693/- the assessed income was determined at Rs.35,13,991/- and total tax payable was determined at Rs.10,86,769/- interest under Section 234B amounting to Rs.3,58,634/-, interest under Section 234D amounting to Rs.11,654/- and interest under Section 244A withdrawn amounting to Rs.23,100/-.

6. Against the levy of interest under Section 234B and 234D, the assessee carried the matter in appeal before the ld. CIT(A) and it was submitted that following the decision of Hon'ble Supreme Court in case of CIT V Bankipur Club Ltd. [1997] 226 ITR 97 (S.C.) and Chelmsford Club V CIT [2000] 243 ITR 89, the Co-ordinate Benches of the Tribunal had decided the issue of principle of mutuality as well as that of

chargeability of interest on amounts lying in banks/FDRs in favour of assessee club as per its common order for various years and copy of the said order was brought to notice of the ld. CIT(A) and it was submitted that when the assessee filed its return of income for the year under consideration, the decision of the jurisdictional Tribunal in assessee's own case for earlier years was in his favour. So, there was no reason for the assessee to have included the interest income in the computation of taxable income for the purposes of payment of advance tax. Hence, under a bonafide belief and as a prudent assessee and also on the advice of its Income Tax Consultants and Auditors, the assessee did not pay advance tax which has ultimately resulted in levy of the impugned interest under Section 234B of the Act, which therefore, deserve to be deleted. It was further submitted that it is only in pursuance of the order of the ITAT for the impugned assessment year, the AO has issued notice to the assessee to pay tax alongwith interest under Section 234B and 234D of the Act. Further reliance was placed on the Hon'ble Punjab & Haryana High Court in case of CIT V Sedco Forex International Drilling Co.Ltd. 264 ITR 320.

7. The submissions so filed by the assessee were considered but not found acceptable to the ld. CIT(A). As per ld. CIT(A), the charging of interest under Section 234B

and 234D are the consequential in nature which is mandatorily charged on the assessed income for default in advance tax and excess refund granted respectively and therefore, he does not find any defect in the appeal effect order so passed by the AO in charging of such interest on total tax payable by the assessee. It was further held by the ld. CIT(A) that such consequential appeal effect order is not appealable order before ld. CIT(A) as per Section 246A of the Act. Further decisions relied on by the assessee were held distinguishable and it was finally held that the judgement of Hon'ble Supreme Court in case of 'Bangalore Club' only provides the correct position of law which was already existing as per the Income Tax Act at time of filing of the return of income, hence, the appeal so filed by the assessee was dismissed.

8. Against the said findings and directions of the ld. CIT(A), the assessee is in appeal before us.

9. Regarding the findings of the ld. CIT(A) that the appeal effect order wherein the AO has levied interest under Section 234B and 234D is not an appealable order, our reference was drawn to the decision of the Hon'ble Punjab & Haryana High Court in case of PCIT V Shri Krishan Gopal, HUF, ITA 253 of 2015 (O&M) dated 15.09.2015 wherein the question

for consideration before the Hon'ble Court was whether the ld. CIT(A) was well within his jurisdiction to entertain the first appeal under Section 246 of the Act against chargeability of interest by the AO under Section 234A, 234B and 234C of the Act. It was submitted that the Hon'ble High Court has dismissed the appeal so filed by the Revenue and has held that the appeal so filed by the assessee is clearly maintainable and in this regard our reference was drawn to the findings of the Hon'ble High Court which are contained at para 7, 8, 9 and 10 of its order and the contents thereof read as under :

*"7. Adverting to issue No. (i), it may be noticed that the question regarding maintainability of appeal under Section 246 of the Act against order charging interest passed by the Assessing Officer under the Act was considered by the Apex Court in* ***Central Provinces Manganese Ore Co. Ltd. v. CIT (1986) 160 ITR 961.*** *It was observed that the levy of interest is the part of the process of assessment. Although Sections 143 and 144 of the Act do not specifically provide for the levy of interest but it is nevertheless a part of the process of assessing the tax liability of the assessee. The Supreme Court held that since levy of interest is a part of the process of assessment, it could be challenged in appeal provided the assessee disputes the chargeability of interest on the ground that he is not liable to the levy of interest at all. It was clarified that where the assessee claims waiver or reduction of the interest levied, that could not be agitated in appeal under Section 246 of the Act but more appropriately by resorting to revisional jurisdiction of the Commissioner. It was further observed that before the revisional jurisdiction of the Commissioner can be invoked for waiver or reduction, the assessee is required to demonstrate before the Assessing Officer that there is a case for waiving or reducing the levy of interest.*

*8. Applying the aforesaid authoritative principles of law enunciated by the Apex Court, the appeal filed by the assessee laying challenge to the very levy of interest under Sections 234A, 234B and 234C of the Act before the CIT(A) was clearly maintainable.*

*9. Similar contention raised by the revenue before the Tribunal against maintainability of appeal before the CIT(A), against levy of interest under Sections 234A, 234B and 234C of the Act, was repelled with the following observations:-*

> *"12. We have occasion to go through the decision of Hon'ble Supreme Court in the case of Central Province Manganese Ore Co. Ltd. vs. CIT (1986) 160 ITR 961 (SC) on an identical issue. The issue raised before the Hon'ble Supreme Court was as to whether orders levying interest under sub-section (8) of section 139 and under sec. 215 are appealable under sec. 246 of the Act. Hon'ble Supreme Court after detailed discussion has been pleased to hold that the levy of interest is part of the process of assessment Although Sections 143 and 144 do not specifically provide for the levy of interest and the levy is, in fact, attributable to sec. 139(8) or section 215, it is. nevertheless a part of the process of assessing the tax liability of the assessee. It was held that, in as much as, the levy of interest is the part of the process of assessment, it is open to an assessee to dispute levy in appeal provided he limits himself to the*

*ground that he is not liable to the levy at all. The fact of that case before the Hon'ble Supreme Court is akin to the fact of the present case as in the present case as well the assessee in their first appeals had limited themselves to the grievance of non-leviable of interest under Sections 234A, 234B and 234C of the Act at all. The contention of the assessee was that the charging of interest under Sections 234A, 234B and 234C was not proper and justified in view of the facts and circumstances of the case as only 20% of the sales consideration was received prior to the end of the relevant financial year and balance 80% was received in the next financial year. Without prejudice to this ground, the assessee during the course of first appellate proceedings also raised an additional ground that the assessee company could be fastened with the levy of interest to the extent of 20% only, i.e. the amount received by the assessee in the relevant financial year. Obviously, it was an alternative ground. The main contention as discussed above of the assessee remained that it was not liable to the levy of interest under Sec. 234A, 234B and 234C of the Act. Thus, respectfully following the ratio laid down by the Hon'ble Supreme Court in the above cited case, we hold that the first appeal against the levy of the disputed interest under Sec.234A, 234B and 234C was very much maintainable under sec. 246 of the Act. Hon'ble Supreme Court has been also pleased to observe that clause (c) of sec. 246 provides an appeal against an order where the assessee denies his liability to be assessed under the Act or against any assessment order under sub-section (3) of sections 143 or 144, where the assessee objects to the amount of income assessed or to the amount of tax determined or to the amount of loss computed or to the status under which he is assessed. Inasmuch as, the levy of interest is part of the process of assessment, it is open to an assessee to dispute the levy in appeal provided he limits himself to the ground that he is not liable to the levy of interest at all. The issue is thus decided in favour of the assessee. In result, ground No.2 involving the issue is rejected."*

*10. Learned counsel for the revenue was unable to demonstrate that the approach of the Tribunal was erroneous or perverse in any manner Issue No.(i) is, thus, decided against the revenue."*

10. Regarding payment of advance tax on the interest so brought to tax by the AO, it was submitted that during the Financial Year relevant to the impugned assessment year and even at the time of filing of the return of income, the decision of Co-ordinate Benches for various years were existing on record wherein the principle of mutuality has been applied and the whole of the income including interest income from banks/FDRs were held to be exempt and it was accordingly submitted that the assessee was clearly having a bonafide belief based on the orders decided by the Tribunal in its own favour and basis such orders, the assessee was under the bonafide belief that there is no liability towards

payment of any advance tax. It was, accordingly, submitted that the said bonafide belief duly supported by the orders of the Co-ordinate Benches for various years have not been taken into consideration by the ld. CIT(A) while dismissing the appeal of the assessee. Further, our reference was drawn to the provisions of Section 234B, 208 and 209 of the Act and it was submitted that for the purpose of determining advance tax, the assessee has to estimate its taxable income and in the present case, the estimation of 'nil' income is based the decisions so passed by the Co-ordinate Benches in earlier years and in light of the same, there was no liability for payment of advance tax and therefore, the levy of interest under Section 234B deserve to be deleted. It was further submitted that the decision of the Hon'ble Supreme Court in case of Bangalore Club (supra) was passed on 14.01.2013 subsequent to the filing of the return of income and at the time of filing of the return of income, the earlier decisions of the Supreme Court were in existence and which were followed by the Co-ordinate Benches in deciding the matter in its favour. In view thereof, it was submitted that there is no basis for holding the assessee as liable for payment of advance tax and consequential levy of interest under Section 234B of the Act.

11. Per contra, the ld. DR has relied on the order of the ld.

CIT(A) and the relevant finding thereof we have already taken not of and hence, not being repeated for the sake of brevity.

12. We have heard the rival contentions and purused the material available on record. Firstly, regarding maintainability of appeal arising out of appeal effect order so passed by the AO whereby the AO has levied interest u/s 234B of the Act, we find that where the assessee disputes the chargeability of such interest as emanating from the order so passed by the AO, consequent to the order of the Tribunal, the assessment order passed u/s 143(3) having merged with the order of the Tribunal and the appeal effect order being in continuation of such an order, the assessee is clearly aggrieved with such levy of interest and has a lawful recourse to file appeal against such levy of interest before the ld CIT(A) under Section 246A and such a right of appeal cannot be denied to the assessee. The dicta laid down by the Hon'ble Punjab and Haryana High Court in case of Krishan Gopal HUF (supra) supports the case of the assessee and we are clearly guided by the same and respectfully following the same, the findings of the ld CIT(A) in this regard are set-aside.

13. Regarding chargeability of interest u/s 234B, it is noted that the interest is charged for default in payment of

advance tax. It has been provided that where in any financial year, an assessee who is liable to pay advance tax under section 208 has failed to pay such tax or where the advance tax paid by such assessee under the provisions of section 210 is less than ninety percent of the assessed tax, the assessee shall be liable to pay interest at the rate and for the period as specified. Therefore, what is essential to determine is liability of the assessee to pay advance tax under Section 208 and where such a liability is crystallized, the interest under section 234B has to be mandatorily charged from the assessee.

14. For the purposes, we refer to the provisions of Section 208 and 209 of the Act. Section 208 provides that advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is ten thousand rupees or more which takes us to provisions of Section 209 which lays down the manner of computation of advance tax.

15. Section 209 reads as under:

> *"209. (1) The amount of advance tax payable in the financial year shall subject to the provisions of sub-sections (2) and (3), be computed a follows, namely:*
>
> *(a) where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1)*

*or sub-section (2) or sub section (5) or sub-section (6) of section 210, he shall first estimate his income and income-tax thereon shall be calculated at the rates in force in the financial year;*

*(b) where the calculation is made by the Assessing Officer for the purpose of making an order under sub-section (3) of section 210, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income furnished by him for any subsequent previous year, whichever is higher, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year,*

*(c) where the calculation is made by the Assessing Officer for the purpose of making an amended order under sub-section (4) of section 210, the total income declared in the return furnished by the assessee for the later previous year, or, as the case may be, the total income in respect of which the regular assessment, referred to in that sub-section has been made, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year;*

*(d) the income-tax calculated under clause (a) or clause (b) or clause (c) shall, in each case, be reduced by the amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income (as computed before allowing any deductions admissible under this Act) which has been taken into account in computing the current income or, as the case may be, the total income aforesaid; and the amount of income-tax as so reduced shall be the advance tax payable:*

*Provided that for computing liability for advance tax, income-tax calculated under clause (a) or clause (b) or clause (c) shall not, in each case, be reduced by the aforesaid amount of income-tax which would be deductible or collectible at source during the said financial year under any provision of this Act from any income, if the person responsible for deducting tax has paid or credited such income without deduction of tax or it has been received or debited by the person responsible for collecting tax without collection of such tax."*

16. Section 210 further provides as follows:

*210. (1) Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular assessment) shall of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209.*

*(2) A person who pays any instalment or instalments of advance tax under sub Section (1), may increase or reduce the amount of advance tax payable in the remaining instalment or instalments to accord with his estimate of his current Income and the advance tax payable thereon, and make payment of the said amount in the remaining instalment or instalments accordingly.*

*(3) In the case of a person who has been already assessed by way of regular assessment in respect of the total income of any previous year, the Assessing Officer, if he is of opinion that such person is liable to pay advance tax, may, at any time during the financial year but not later than the last day of February, by order in writing, require such person to pay advance tax calculated in the manner laid down in section 209, and issue to such person a notice of demand under section 156 specifying the instalment or instalments in which such tax is to be paid.*

*(4) If, after the making of an order by the Assessing Officer under sub-section (3) and at any time before the 1st day of March, a return of income is furnished by the assessee under section 139 or in response to a notice under sub-section (1) of section 142, or a regular assessment of the assessee is made in respect of a previous year later than that referred to in sub-section (3), the Assessing Officer may make an amended order and issue to such assessee a notice of demand under section 156 requiring the assessee to pay, on or before the due date or each of the due dates specified in section 211 falling after the date of the amended order, the appropriate percentage, specified in section 211, of the advance tax computed on the basis of the total income declared in such return or in respect of which the regular assessment aforesaid has been made.*

*(5) A person who is served with an order of the Assessing Officer under sub-section (3) or an amended order under sub-section (4) may, if in his estimation the advance tax payable on his current income would be less than the amount of the advance tax specified in such order or amended order, send an intimation in the prescribed form to the Assessing Officer to that effect and pay such advance tax as accords with his estimate, calculated in the manner laid down in section 209, at the appropriate percentage thereof specified in section 211, on or before the due date or each of the due dates specified in section 211 falling after the date of such intimation.*

*(6) A person who is served with an order of the Assessing Officer under sub-section (3) or amended order under sub-section (4) shall, if in his estimation the advance tax payable on his current income would exceed the amount of advance tax specified in such order or amended order or intimated by him under sub-section (5), pay on or before the due date of the last instalment specified in section 211, the appropriate part or, as the case may be, the whole of such higher amount of advance tax as accords with his estimate, calculated in the manner laid down in section 209.*

17. In the instant case, it is not the case of the Revenue that the Assessing office has passed any order under section 210 of the Act and therefore, clause (b) and (c) of sub-section (1) of section 209 are not applicable. As per clause

(a) of sub-section (1) of section 209, it is clear that the assessee has to estimate its current income and income tax thereon shall be calculated at the rates in force in the financial year which shall be the basis for determining the liability and quantum of advance tax which the assessee will be liable to deposit.

18. In the instant case, there is no dispute that during the relevant financial year, besides receipts from members, there were interest receipts on deposits placed with FDR and in savings bank account maintained by the assessee. As far as determining the taxability thereof and estimation of advance tax liability, the explanation of the assessee is that the Coordinate Benches of the Tribunal have consistently held for past many years that such receipts from members as well as interest on FDR/Savings bank account was not taxable in its hand following the principle of mutuality and the decisions of the Hon'ble Supreme Court in case of Bankipur Club Ltd and Chelmsford Club(supra). It has been further explained that such a position continues during the relevant financial year and even at the time of filing of the return of income for the impugned assessment year and therefore, the assessee was under a bonafide belief that such receipts from members and interest on FDR/saving bank account was not taxable and thus, there was no liability to pay advance tax

and in absence of such a liability, the chargeability of interest u/s 234B doesn't arise for consideration.

19. We find considerable merit in the explanation so submitted by the assessee. The decision of the Coordinate Bench for the impugned assessment year has been passed on 15/03/2013 following the decision of the Hon'ble Supreme Court in case of Bangalore Club which was pronounced on 14/01/2013, wherein receipts from members have been held as not-taxable and interest on FDRs/saving bank account has been held taxable. Prior to that, we find that the Coordinate Benches have consistently held against chargeability of tax on receipts from members as well as interest on FDR/savings bank account. More particularly, we refer to the decision of the Coordinate Bench for A.Y 2004-05 which was pronounced on 29/01/2008 well before the start of the relevant financial year 2008-09 wherein such interest receipts from FDRs/savings account has been held not taxable. Such a situation continues at the close of the financial year, at the time of filing of the return on 30/09/2009 and even subsequently for A.Y 2005-06, A.Y 2006-07, 2007-08, and 2008-09 where the Coordinate Benches have consistently decided in favour of the assessee against the taxability of such receipts. Infact, the earlier decision for A.Y 2004-05 and A.Y 2008-09 has been

considered by the Coordinate Bench for the impugned assessment year 2009-10 and basis the subsequent decision of the Hon'ble Supreme Court, interest on FDRs/saving bank account has been held taxable. Therefore, we find that the bonafide of the assessee is duly established in estimating nil income and nil advance tax liability during the relevant financial year as supported by the decisions of the Coordinate Benches.

20. The subsequent decision of the Hon'ble Supreme Court though no doubt lay down the final position of law as then existing but at the same time, the assessee cannot be expected to take the same into consideration at the time of estimation of its advance tax liability during the relevant financial year, more so where there are direct decision of the Coordinate Benches in assessee's own case and which have not been reversed or operation thereof not stayed at the time of estimation of such advance tax liability during the currency of the financial year. The subsequent decision of the Hon'ble Supreme Court determines the final taxability of such receipts which have been duly followed by the Coordinate Bench and due effect thereof given by the AO and not disputed by the assessee but the same cannot be a basis for determining the liability towards the advance tax which has to be determined basis the position, which in the instant

case as so held by the Coordinate Benches as non-taxable, as prevalent during the relevant financial year and not at a later point in time.

21. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, in absence of liability towards advance tax under Section 208 r/w 209 during the relevant financial year, the question of chargeability of interest u/s 234B doesn't arise and the same is hereby directed to be deleted.

22. In the result, the appeal of the assessee is allowed.

Order pronounced on 28/10/2024

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(A.D.JAIN )** | **(VIKRAM SINGH YADAV)** |
| **VICE PRESIDENT** | **ACCOUNTANT MEMBER** |

"Poonam"

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar